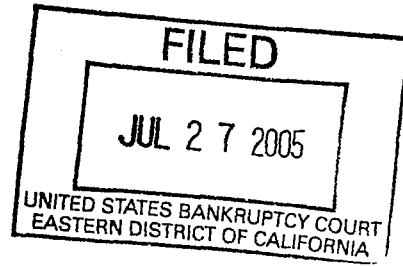


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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)	Case No. 05-25853-C-7
)	
FRANKLIN A. VAN DYKE, Sr. and)	DC No. PDM-1
YAVONDA R. VAN DYKE,)	
)	
Debtors.)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON MOTION FOR RELIEF FROM AUTOMATIC STAY**

These findings of fact and conclusions of law are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014.

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(G).

Findings of Fact

Debtors filed this voluntary chapter 7 petition on May 13, 2005. They scheduled real property commonly known as 8338 Sea Island Court, Elk Grove, CA ("the property") as an asset of the estate. The property was scheduled as exempt in the amount of \$75,000. The chapter 7 trustee filed a report finding that

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1 there was no property available for distribution from the
2 estate over and above that exempted by debtor.

3 On June 27, 2005, Long Beach Mortgage Company ("movant")
4 filed a motion, notice, and declaration requesting that this
5 court vacate the automatic stay to permit movant to commence
6 foreclosure proceedings against the property. Movant's motion
7 requests attorneys' fees and costs. The motion, notice, and
8 declaration were properly served and a final hearing thereon
9 was set for July 26, 2005.

10 The motion and declaration establish that the property is
11 worth \$430,000. Movant asserts that it is owed \$372,163.62.
12 There are no other liens against the property. Using the
13 movant's numbers, debtors have equity in excess of \$57,000.

14 No opposition to the motion was filed. Upon review of the
15 record, the court determined that the written record was
16 adequate and that no oral argument is necessary.

17 18 Conclusions of Law

19 The automatic stay of acts against the debtor in personam
20 and of acts against property other than property of the estate
21 continues until the earliest of the time when the bankruptcy
22 case is closed, dismissed, or an individual in a chapter 7 case
23 is granted a discharge. 11 U.S.C. § 362(c). However, the
24 automatic stay may be terminated earlier if debtor fails to
25 adequately protect the secured party's interest, § 362(d)(1),
26 and, with respect to a stay of an act against property, the
27 debtor does not have equity in the property, § 362(d)(2)(A),
28 and the property is not necessary to an effective

1 reorganization. § 362(d)(2).

2 In this instance, debtor has equity in excess of 57,000.
3 As such, the motion requesting relief from the automatic stay
4 as against the debtors shall be denied without prejudice.

5 Because the trustee filed a no asset report, the motion
6 will be granted as to the trustee.

7 Additionally, in light of the fact that movant's motion was
8 unnecessary, the court denies movant's request for attorney's
9 fees and costs. As such, debtor is deemed to be the prevailing
10 party for purposes of California Civil Code § 1717.

11 An appropriate order will issue.

12 Dated: July 27, 2005

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15 UNITED STATES BANKRUPTCY JUDGE
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